

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

IN RE:

CASE NO.: 07-02089-5-ATS

CHRISTOPHER SEAN MILLER
HEATHER BARNWELL MILLER

CHAPTER 7

DEBTORS

TRUSTEE'S RESPONSE TO MOTION TO CONVERT

NOW COMES the Trustee, by and through undersigned counsel, and he hereby responds and objects to Debtors' motion to convert this case to Chapter 13. The conversion is not sought in good faith as its primary purpose is to avoid the Trustee's cause of action to avoid the late recorded real estate lien of Debtor Heather Miller's father, Mr. Stephen Barnwell. Mr. Barnwell is an "insider of the Debtors for Section 547 preference analysis purposes. The Barnwell debt came into existence on November 20, 2006 when the Debtors bought their house located at 135 Ryder Cup Circle, Raleigh, North Carolina 27603 (the "House"). However, the Barnwell deed of trust found at Book 12574, page 110 of the Wake County Registry was not recorded until May 30, 2007. The Trustee has stated his intention to file an action to avoid the lien under Sections 547 of the Bankruptcy Code, which would likely create a significant return for unsecured creditors in the Chapter 7 case. If converted to Chapter 13, no challenge to the Barnwell lien will be filed and it is likely that Debtors will contend in their Chapter 13 plan that no recovery is necessary for unsecured creditors.

WHEREFORE, the Trustee respectfully requests that the motion to convert be denied and that such other and further relief as the Court may deem just and proper be ordered.

DATED: December 4, 2007

BATTLE, WINSLOW, SCOTT & WILEY, P.A.

by: s/Joseph N. Callaway

Joseph N. Callaway
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CERTIFICATE OF SERVICE

I, Joseph N. Callaway, Attorney for Trustee in this action, hereby certify that on the 4th day of December, 2007, I served the documents to which this certificate is attached:

TRUSTEE'S RESPONSE TO MOTION TO CONVERT

by depositing a copy thereof postpaid in a post office or official depository under the exclusive care and custody of the United States Postal Service, in a wrapper, addressed to each of the following parties of interest in this action at the following last known addresses:

Marjorie K. Lynch, Bankruptcy Administrator
U.S. Bankruptcy Court
Eastern District of North Carolina
P.O. Box 3758
Wilson, NC 27895-3758

Christopher and Heather Miller
Chapter 7 Debtors
135 Ryder Cup Circle
Raleigh, NC 27603

Mr. Jason Watson
Attorney for Debtors
Offices of John T. Orcutt, P.C.
6616-203 Six Forks Road
Raleigh, North Carolina 27615

s/Joseph N. Callaway
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